

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GREGORY T. DEAN and
DONALD J. FOWLER,

Defendants.

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17-CV-139 (GHW)
ECF Case

**DECLARATION OF DAVID STOELTING IN SUPPORT OF PLAINTIFF SECURITIES
AND EXCHANGE COMMISSION'S MOTION FOR SUMMARY JUDGMENT**

I, David Stoelting, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Senior Trial Counsel with the Securities and Exchange Commission in the SEC's New York Regional Office. This declaration is based on my personal knowledge, information and belief.
2. I attach to this declaration a list of the 76 exhibits that are being filed as exhibits to the SEC's Statement of Material Facts in support of its motion for summary judgment.
3. Some of these exhibits are submitted in support of the SEC's motion for sanctions and motion to exclude the defendants' expert witness, which are being filed contemporaneously with the motion for summary judgment.
4. Exhibits 19-25 relate to the motion to exclude the defendants' expert witness and are referenced in the SEC's memorandum of law in support of that motion.
5. Exhibit 56, 57, 58 and 62 relate to the motion for sanctions and are referenced in the SEC's memorandum of law in support of that motion.

6. Exhibit 25 is an extract from the J.D. Nicholas trading blotter, an Excel spreadsheet, and was prepared by SEC staff who sorted the data fields to show only rows associated with certain trades in the stock of Solarcity on December of 2012.

7. Exhibit 56 is an email that Liam O'Brien, counsel for the defendants, sent on September 26, 2017, at 1:48 PM. It is my understanding from a review of the native files that the audio recordings attached to that e-mail consisted of approximately 30 MB of data. Due to that large file size, the email was blocked by the SEC email system. Mr. O'Brien provided this email to the SEC in October 2017.

8. Exhibits 67-71 contain documents that were received by multiple customers in identical form: Activity Letters (67); Day Trade Risk Letters (68); Intent to Maintain letters (69); Margin Agreements (70), and Option Agreements (71). A single copy of each document is used as the Exhibit, along with a cover sheet prepared by SEC staff listing the customers who are named on each document and indicating the Bates number of their version of the document.

9. Exhibit 74 consists of transcripts of audio recordings of phone calls between J.D. Nicholas representatives and customers. The transcript was prepared by Diversified Reporting Services, Inc. at the request of the SEC.

10. Exhibit 75 consists of transcripts of audio recordings of phone calls between Gregory Dean and several customers. The transcripts were prepared by Diversified Reporting Services, Inc. at the request of the SEC. The recordings that were the basis of Exhibits 74 and 75 are being produced on disks, under separate cover, and are labelled Ex. 74A through 74W and 75A through 75F.

11. Exhibits 43 and 49 are true and correct copies of investigative document subpoenas the SEC staff sent to J.D. Nicholas in 2014 and 2016 requesting the production of,

among other things, all documents in any way relating to customer accounts handled by Dean and Fowler. In response, the staff received documents from J.D. Nicholas, which were then produced to counsel for Dean and Fowler in April and May 2017 as part of discovery in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 9, 2018, in New York, New York


David Stoelting

EXHIBITS TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS

DATE	DOCUMENT	EX #
02.07.18	Expert Report of Anthony Raimondi	1
01.24.18	Declaration of Kenneth Bayer	2
01.22.18	Declaration of Clay Miller	3
01.26.18	Declaration of Frank Phillips	4
01.28.18	Declaration of Joseph Shea	5
	Gregory Dean BrokerCheck Report	6
	Donald Fowler BrokerCheck Report	7
06.21.07	Dean – Registered Representative Agreement	8
06.21.07	Fowler – Registered Representative Agreement	9
02.02.18	Declaration of Cheri Tucker	10
10.03.17	Eugene Bernardo deposition transcript	11
09.06.17	Allen Deuschle deposition transcript	12
09.08.17	Steve Hellwig deposition transcript	13
10.12.17	Bobby Pilkington deposition transcript	14
08.30.17	Robert Weathers deposition transcript	15
07.13.17	Gregory Dean deposition transcript	16
10.27.17	Gregory Dean deposition transcript	17
07.20.17	Donald Fowler deposition transcript	18
12.11.17	Robert Conner deposition transcript	19
11.09.17	Robert Conner Expert Report	20
10.18.17	Expert Retainer Agreement	21
12.01.17	Robert Conner's Responses to Document Subpoena	22
12.11.17	Monthly Portfolio Values	23
01/00/13	Eugene Bernardo account statement	24
	Trade blotter re Solar City trades on 12.13.12	25
07.30.09	<i>Keith Howard Medeck</i> (FINRA Nat'l Adj Council)	26
06.20.90	<i>Margaret Coke</i> (NASD)	27
04.19.90	<i>Dale Pon</i> (NYSE)	28
09.30.16	<i>Sherwood Investments</i> (M.D. Fla.)	29
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